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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,557	10/14/2003	Charles S. Taylor	GUID-005CON6	5455
89729	7590	02/02/2011		
Law Office of Alan W. Cannon 942 Mesa Oak Court Sunnyvale, CA 94086			EXAMINER SINGH, SUNIL K	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 02/02/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/684,557	Applicant(s) TAYLOR ET AL.	
	Examiner Sunil K. Singh	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 12, 13, 46, 53, 58, 190-192 and 194-223 is/are pending in the application.
- 4a) Of the above claim(s) 203-218 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 223 is/are allowed.
- 6) ☒ Claim(s) 1, 12, 13, 46, 53, 58, 190-192, 194-199 and 219-222 is/are rejected.
- 7) ☐ Claim(s) 200 and 201 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/26/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to applicants amendments filed on 11/08/2010.

Claim Rejections - 35 USC § 102

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 190-192, 194-198, 202, 219 and 220 are rejected under 35 U.S.C. 102(e) as being anticipated by Boyd et al. (US. 5,799,661)

Boyd discloses a device that includes: a means for stabilizing the beating heart comprising a contact member (231) shapeable to engage the surface of the beating heart; wherein the contact member is hollow; wherein the contact member is capable of being inflated; a shaft member (239); wherein the contact member may comprise a flexible tube (231) that is capable of contacting a surface of the beating heart; wherein the contact member is capable of being bent to form a U-shaped configuration (Fig. 44 shows that the member is being bent and is capable of being bent to a U-shape); wherein the contact member is configured for application of a vacuum; wherein the flexible tube contains a plurality of particles; and wherein a malleable member extends along at least a portion of a length of the tube. Boyd further teaches a device having a contact member that comprises a single wire and wherein the wire is made of a

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malleable material capable of retaining its shape (titanium alloy) (column 19, lines 60-65).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1,46,53, 58 and 221 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyd and further in view of Buckman, Jr. et al. (US 5,582,580).

Boyd discloses the invention substantially as claimed except for a device that includes a means for introducing positive/negative fluid pressure to the contact member.

Buckman teaches a device that includes a means for introducing positive/negative fluid pressure to the contact member (82) and wherein the contact member (82) is malleable (Fig. 7) (column 9, line 28-column 10, line 63). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Boyd to include a means for introducing pressure to the contact member, as taught by Buckman, in order to provide an alternate means of shaping the contact member that is allows the contact member to have a plurality of different shapes. Furthermore, such means are well known in the art.

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4. Claims 12,13 and 222 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boyd et al. in view of Buckman, Jr. et al. and further in view of Heilman et al. (US 5,098,369).

Boyd/Buckman discloses the invention substantially as claimed except for wherein the contact member contains a conformable material that is granular, a polymeric, or a gel.

Heilman teaches a device that includes a hollow contact member that contains conformable material that is a gel (col. 1, lines 15-21). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Boyd/Buckman to include a contact member containing a gel, as taught by Heilman, since such a device is well known in the art.

Allowable Subject Matter

5. Claims 200 and 201 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claim 223 is allowed.

Response to Arguments

7. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil K. Singh whose telephone number is (571) 272-3460. The examiner can normally be reached on Monday-Friday (Increased Flex Schedule).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris L. Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

01/28/2011

/Sunil K Singh/
Examiner, Art Unit 3732

/Cris L. Rodriguez/
Supervisory Patent Examiner, Art Unit 3732